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RECORDATION NO. _____

MAR 25 1971 - 3:11 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of April 1, 1971

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

THE ALTON & SOUTHERN RAILWAY
COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of April 1, 1971

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

MERCANTILE TRUST COMPANY NATIONAL
ASSOCIATION

6 Model SW-1500 Diesel Switching Locomotives

Nos. 1512-1517, Both Incl.

Committed Amount \$1,050,000

\$ 450,000

CONDITIONAL SALE AGREEMENT dated as of April 1, 1971, by and between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Manufacturer or Builder, as more particularly set forth in Article 28 hereof), and THE ALTON & SOUTHERN RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS the Builder has agreed to construct or cause to be constructed and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B attached hereto (hereinafter called the Equipment);

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* The Builder will construct the Equipment and will sell and deliver it to the Railroad and the Railroad will purchase from the Builder and accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Railroad and the Builder (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment shall conform to all Department of Transportation requirements and specifications and to all standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

Item 2 of Schedule A hereto (the Equipment settled for on each such Closing Date being hereinafter called

ARTICLE 2. *Delivery.* The Builder will deliver the various units of the Equipment to the Railroad at such point or points within the United States of America as shall be specified by the Railroad, freight charges, if any, prepaid (unless the Railroad shall otherwise specify or direct), in accordance with the delivery schedule set forth in Schedule B hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of Government, such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered and accepted on or before October 1, 1971, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Railroad and the Builder shall execute (a) an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered and accepted hereunder and (b) a separate agreement providing for the purchase of such excluded Equipment by the Railroad, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Railroad and the Builder shall determine.

The Equipment during construction shall be subject to inspection by inspectors or other authorized representatives of the Railroad. Upon delivery of each unit, the Railroad agrees to cause to be executed and delivered to the Builder, a certificate of acceptance (hereinafter called

graph (b) of the preceding paragraph of this Article 3 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof in respect of such obligation.

The first instalment of the portion of the indebtedness in respect of the Purchase Price of all the Equipment payable pursuant to subparagraph (c) of the third paragraph of this Article 3 shall be payable on October 1, 1971, and subsequent instalments shall be payable semi-annually thereafter on each April 1 and October 1, through April 1, 1986. The unpaid portion of such indebtedness shall bear interest, from the respective Closing Dates or, in the case of any portion thereof owing by reason of the fact that the Final Invoiced Purchase Price exceeds the aggregate of the Group Invoiced Purchase Prices, from the tenth business day after delivery of the Final Certificate, regardless of any postponement thereof pursuant to the provisions of any assignment of this Agreement, at a rate per annum equal to the best rate of Mercantile Trust Company National Association for loans of 90-day maturity to substantial and responsible commercial borrowers (hereinafter called the Prime Rate) as from time to time in effect. Each change in such interest rate shall take effect on the first day of the month following the change in such Prime Rate. Such interest shall be payable semi-annually on the dates of maturity of principal as above set forth.

Anything herein contained to the contrary notwithstanding, the Interim Invoiced Purchase Prices shall be so fixed that they will not exceed, in the aggregate, the Final Invoiced Purchase Price. The Final Certificate shall be delivered on or before October 1, 1971.

The term "Closing Date" with respect to any Group shall mean such date, not more than 10 business days following presentation by the Builder to the Railroad of the

invoice for such Group and the Certificates of Acceptance in respect thereof, as shall be fixed by the Railroad by written notice delivered to the Manufacturer at least 5 business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made by the Railroad in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

The Railroad may, at its option, at any time, prepay any or all of the principal instalments, without premium, in the inverse order of maturity; *provided, however*, that if such prepayment shall be made directly or indirectly from proceeds of borrowings, a premium shall be payable in the amount of $\frac{1}{2}$ of 1% per annum upon each instalment so prepaid from the date of prepayment to the date upon which such instalment is due.

ARTICLE 4. *Changes in Prices.* The base price or prices of the Equipment are subject to increase or decrease in accordance with the Builder's Proposal referred to in Schedule B hereto, as such Proposal shall be from time to time amended, and as may be agreed to by the Builder and the Railroad.

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ments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment. The Railroad hereby waives and releases any and all rights, existing, or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

ARTICLE 7. *Marking of Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set out in Schedule B hereto and will cause to be kept plainly, distinctly, permanently and conspicuously marked in stencil on each side of such unit, in letters not less than one-half inch in height, the name of the Manufacturer followed by the word "Owner" or other appropriate words designated by the Manufacturer, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Manufacturer to the Equipment and its rights under this Agreement. The Railroad will not place any unit of the Equipment which shall have been delivered to it hereunder in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and will replace promptly any such marking, which may be removed, defaced or destroyed. The Railroad will not change the numbers of any such units except with the consent of the Manufacturer and in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Manufacturer by the Railroad and shall promptly be filed, recorded or de-

posited by the Railroad in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Railroad may cause the Equipment to be lettered with the name, emblem, or initials of the Railroad or with the name, emblem, or initials of a subsidiary or affiliated railroad company controlling or controlled by the Railroad or may letter it in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

ARTICLE 8. *Lost, Destroyed or Damaged Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called "Casualty Occurrences") prior to the payment of the full indebtedness in respect to the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall, within 30 days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Manufacturer in regard thereto. On or before March 1 in each year the Railroad shall pay to the Manufacturer a sum equal to the fair value of all units of the Equipment having suffered a Casualty Occurrence in the preceding calendar year in respect of which a payment shall not theretofore have been made to the Manufacturer as hereinafter provided; *provided, however*, that from time to time, in any calendar year, when the total fair value of the units of the Equipment having suffered a Casualty Occurrence (exclusive of units of the Equipment having suffered a Casualty Occurrence in respect of which a payment shall

ments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment. The Railroad hereby waives and releases any and all rights, existing, or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

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posited by the Railroad in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Railroad may cause the Equipment to be lettered with the name, emblem, or initials of the Railroad or with the name, emblem, or initials of a subsidiary or affiliated railroad company controlling or controlled by the Railroad or may letter it in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

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theretofore have been made to the Manufacturer pursuant to this Article 8) shall exceed \$100,000, the Railroad, within 30 days of such event, shall pay to the Manufacturer a sum equal to the fair value of such units.

For all purposes of this Article 8 the value of any unit suffering a Casualty Occurrence shall be the Purchase Price of such unit less depreciation at the annual rate (but not in excess of 6%) approved by the Interstate Commerce Commission for such unit for each period of 12 calendar months elapsed since the date of delivery and acceptance of such unit to the date of the Casualty Occurrence in respect thereof.

Any money paid to or received by the Manufacturer pursuant to this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Manufacturer, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of a unit or units of standard gauge railroad equipment (other than work or passenger equipment) first put into service no earlier than the date of this Agreement, to replace such unit having suffered a Casualty Occurrence, as the Railroad may direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied to instalments of the indebtedness hereunder thereafter falling due in the inverse order of their maturities (but without premium and whether or not such amount shall be sufficient to prepay one or more entire instalments). In case of replacement the amount to be paid by the Manufacturer in respect of any replacing unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer and the Railroad shall pay any additional cost of such unit. The

amount which any such replacing unit would have cost if acquired on the earliest date when any of such money was paid to the manufacturer and the applicable rate of depreciation on the replaced unit shall be conclusively determined by the certificate of a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Railroad.

The Railroad will cause any replacing unit to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturer to such replacements.

Whenever the Railroad shall file with the Manufacturer pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacement unit, the Railroad shall file therewith, in such number of counterparts or copies as may reasonably be requested:

- (1) a certificate of a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment) first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article

8 and certifying the cost of such replacing unit and the amount which such replacing unit would have cost if acquired on earliest date when any such money was paid to the Manufacturer; and

(2) an opinion of counsel for the Railroad that title to such replacing unit is vested in the Manufacturer free and clear of all liens, security interests and other encumbrances, and that such unit has come under and become subject to this Agreement.

So long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, any money paid to the Manufacturer pursuant to this Article 8, shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such direct obligations of the United States of America, maturing in not more than five years from the date of such investment (hereinafter called Government Securities), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Government Securities as the Railroad may in writing direct. Any Government Securities shall be sold by the Manufacturer at or about the time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the Purchase Price if such application is requested by the Railroad as hereinabove provided or is otherwise required by the provisions of this Article 8. Any interest or earned discount received by the Manufacturer on any Government Securities shall be held by the Manufacturer and applied as herein provided. Upon the disposition of any Government Securities by the Manufacturer pursuant hereto, whether at maturity or by sale or redemption or otherwise, any amounts received thereon, including any interest received by the Manufacturer upon or prior to such disposition, up to the cost (including accrued interest or earned discount) thereof, shall be held by the

Manufacturer for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If the amounts so received on such Government Securities (including such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Manufacturer an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Manufacturer in connection with the purchase and sale of Government Securities.

In the event that any moneys paid to, or held by, the Manufacturer pursuant to this Article 8 are applied to the prepayment of indebtedness in respect to the Purchase Price the Railroad will pay to the Manufacturer on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If one of the events of default specified in Article 18 hereof shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Manufacturer pursuant to this Article 8 (including for this purpose Government Securities and interest thereon) shall be applied by the Manufacturer as if such money were money received upon the sale of Equipment pursuant to Article 19 hereof.

ARTICLE 9. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment in good order and repair at its own expense.

ARTICLE 10. *Builder's Warranty of Material and Workmanship.* The Builder warrants to the original user that the Equipment is of the kind and quality described in the specification referred to herein and is suitable for the ordinary purposes for which such Equipment is used.

Builder further warrants the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date

of delivery or before the Equipment has been operated 250,000 miles whichever event shall first occur. Builder agrees to correct such defects, which examination shall disclose to Builder's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of Builder's obligation with respect to such defect under this warranty.

Builder warrants specialties not of its own specification or design to the same extent that the Suppliers of such specialties warrant such items to Builder.

There are no warranties, expressed or implied, made by Builder except the warranties set out above.

ARTICLE 11. *Compliance With Laws and Rules.* During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

ARTICLE 12. *Reports and Inspections.* On or before March 1, in each year, commencing with the year 1972, the Railroad will furnish to the Manufacturer a statement showing, as at the preceding December 31, the amount,

In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such a point or points on its lines as shall be designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient to the Railroad. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If the Railroad shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election, to the extent not prohibited by any mandatory requirements of law then in force and applicable thereto

retain the Equipment as its own and make such disposition thereof as the Manufacturer shall deem fit (including, if the Manufacturer so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Railroad's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment by the Railroad; *provided, however*, that, if the Railroad, within 20 days of receipt of notice of the Manufacturer's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment which the Railroad has agreed to purchase hereunder, together with interest thereon accrued and unpaid and all other payments due by the Railroad under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad; or the Manufacturer, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad, or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement. Written notice of the Manufacturer's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof at any time during a period of 30 days after the entire in-

debtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Manufacturer shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine in compliance with any such requirements of law, provided that the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Manufacturer may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now

or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Manufacturer upon demand, and, if the Railroad shall fail to pay such deficiency (with interest thereon at the rate of 10% per annum to the extent legally enforceable), the Manufacturer may bring suit therefor and shall be entitled to recover judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interests hereunder to more than one assignee, each such assignee shall be en-

titled to exercise all rights of the Manufacturer hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

ARTICLE 20. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any State, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or sell the Equipment or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder and any and all rights of redemption.

ARTICLE 21. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's rights thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Manufacturer's rights or the obligations of the Railroad hereunder. The Manufacturer's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the obligations of the Railroad or the Manufacturer's rights hereunder with respect to any subsequent payments or default therein.

ARTICLE 22. *Recording.* The Railroad will cause this Agreement and any assignments hereof or of any interest herein, and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturer certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturer.

ARTICLE 23. *Payment of Expenses.* The Railroad will pay all reasonable costs, charges, and expenses, except the counsel fees of the Builder, including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing, registration or recording of this Agreement, of the first assignment by the Builder of this Agreement, of any instrument supplemental to or amendatory of this Agreement or such first assignment and of any certificate of the payment in full of the indebtedness in respect of the Purchase Price due hereunder. In addition, the Railroad will pay all reasonable costs, charges and expenses, except fees and expenses of counsel, but including stamp and other taxes, if any, of the first assignee of this Agreement.

ARTICLE 24. *Notice.* Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at its office at 210 North 13th Street, St. Louis, Missouri 63103, or at such other address as may have been furnished in writing to the Manufac-

turer by the Railroad. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at the address specified in Item 4 of Schedule A hereto. Any notice hereunder to any assignee of the Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Manufacturer, as the case may be, by such assignee.

ARTICLE 25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 26. *Effect and Modification of Agreement.* This Agreement exclusively and completely states the rights of the Manufacturer and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and the Railroad.

ARTICLE 27. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 28. *Definitions.* The term "Manufacturer" whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are

retained and excluded from any assignment; and the term "Builder" whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 29. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date specified in the introductory paragraph of this Agreement, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the day, month and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By

L. D. Darnall

Vice President

Attest:

W. A. Venable
Assistant Secretary

[SEAL]

THE ALTON & SOUTHERN RAILWAY COMPANY

By

H. H. Hoffman

Vice President

Attest:

J. B. Stanger
Secretary

[SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

On this *11th* day of *March*, 1971, before me personally appeared **B. B. BROWNELL**, to me personally known, who being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division); that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

My Commission Expires OCTOBER 28, 1971

[SEAL]

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

On this *10th* day of *March*, 1971, before me personally appeared **H. D. HUFFMAN**, to me personally known, who being by me duly sworn, says that he is the Vice President of THE ALTON & SOUTHERN RAILWAY COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

My Commission Expires May 30, 1972

[SEAL]

In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such a point or points on its lines as shall be designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient to the Railroad. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If the Railroad shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election, to the extent not prohibited by any mandatory requirements of law then in force and applicable thereto

retain the Equipment as its own and make such disposition thereof as the Manufacturer shall deem fit (including, if the Manufacturer so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Railroad's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment by the Railroad; *provided, however*, that, if the Railroad, within 20 days of receipt of notice of the Manufacturer's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment which the Railroad has agreed to purchase hereunder, together with interest thereon accrued and unpaid and all other payments due by the Railroad under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad; or the Manufacturer, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad, or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement. Written notice of the Manufacturer's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof at any time during a period of 30 days after the entire in-

debtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Manufacturer shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine in compliance with any such requirements of law, provided that the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Manufacturer may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now

or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Manufacturer upon demand, and, if the Railroad shall fail to pay such deficiency (with interest thereon at the rate of 10% per annum to the extent legally enforceable), the Manufacturer may bring suit therefor and shall be entitled to recover judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interests hereunder to more than one assignee, each such assignee shall be en-

titled to exercise all rights of the Manufacturer hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

ARTICLE 20. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any State, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or sell the Equipment or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder and any and all rights of redemption.

ARTICLE 21. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's rights thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Manufacturer's rights or the obligations of the Railroad hereunder. The Manufacturer's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the obligations of the Railroad or the Manufacturer's rights hereunder with respect to any subsequent payments or default therein.

ARTICLE 22. *Recording.* The Railroad will cause this Agreement and any assignments hereof or of any interest herein, and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturer certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturer.

ARTICLE 23. *Payment of Expenses.* The Railroad will pay all reasonable costs, charges, and expenses, except the counsel fees of the Builder, including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing, registration or recording of this Agreement, of the first assignment by the Builder of this Agreement, of any instrument supplemental to or amendatory of this Agreement or such first assignment and of any certificate of the payment in full of the indebtedness in respect of the Purchase Price due hereunder. In addition, the Railroad will pay all reasonable costs, charges and expenses, except fees and expenses of counsel, but including stamp and other taxes, if any, of the first assignee of this Agreement.

ARTICLE 24. *Notice.* Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at its office at 210 North 13th Street, St. Louis, Missouri 63103, or at such other address as may have been furnished in writing to the Manufac-

turer by the Railroad. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at the address specified in Item 4 of Schedule A hereto. Any notice hereunder to any assignee of the Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Manufacturer, as the case may be, by such assignee.

ARTICLE 25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 26. *Effect and Modification of Agreement.* This Agreement exclusively and completely states the rights of the Manufacturer and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and the Railroad.

ARTICLE 27. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 28. *Definitions.* The term "Manufacturer" whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are

retained and excluded from any assignment; and the term "Builder" whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 29. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date specified in the introductory paragraph of this Agreement, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the day, month and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By

L. D. Dammell

Vice President

Attest:

W. A. Vink
Assistant Secretary

[SEAL]

THE ALTON & SOUTHERN RAILWAY COMPANY

By

H. H. Hoffman

Vice President

Attest:

J. B. Stanger
Secretary

[SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

On this *11th* day of *March*, 1971, before me personally appeared **B. B. BROWNELL**, to me personally known, who being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division); that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

My Commission Expires OCTOBER 28, 1971

[SEAL]

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

On this *10th* day of *March*, 1971, before me personally appeared **H. D. HUFFMAN**, to me personally known, who being by me duly sworn, says that he is the Vice President of THE ALTON & SOUTHERN RAILWAY COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

My Commission Expires May 30, 1972

[SEAL]

SCHEDULE A

GENERAL MOTORS CORPORATION

(Electro-Motive Division)

Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation.

Item 2: For the purpose of making settlement, the Equipment shall be settled for in not more than one Group delivered to and accepted by the Railroad.

Item 3: The Committed Amount: \$158,333.33 per unit (limited to \$950,000.00 aggregate for all 6 units of Equipment).

Item 4: LaGrange, Illinois 60525.

SCHEDULE B

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION), [BUILDER].

THE ALTON & SOUTHERN RAILWAY COMPANY,
VENDEE [RAILROAD].

Type	Quantity	Specifications	Railroad's Road Nos.	Unit Base Price*	Delivery
1500 HP Model SW 1500 Diesel Switch Locomotives	6	Electro-Motive Division Spec. No. 8036, dated March 5, 1970, as amended by Specifi- cation Amendment 8036.2, May 1, 1970.	1512- 1517, both incl.	\$175,805	April, 1971

All in accordance with the Railroad's Purchase Order No. 700143-A, Oct. 2, 1970, as supplemented or amended from time to time.

* Freight to point of delivery to be added.

AGREEMENT AND ASSIGNMENT dated as of April 1, 1971, by and between the corporation first named in the testimonium below (hereinafter called the Builder), and MERCANTILE TRUST COMPANY NATIONAL ASSOCIATION (hereinafter called the Assignee), a national banking association organized under the laws of the United States of America, with its chief place of business at 721 Locust Street, St. Louis, Mo. 63166.

WHEREAS the Builder and THE ALTON & SOUTHERN RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of April 1, 1971 (hereinafter called the Conditional Sale Agreement), covering the manufacture, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment described or referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, (a) all the right, title and interest of the Builder in and to the Equipment and each unit thereof when and as severally delivered and accepted and, as to each such unit upon payment to the Builder of the amounts required to be paid under Section 6 hereof in respect of such unit, (b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement in respect of the Equipment (except the right to manufacture and the right to receive the

payments specified in the third paragraph of Article 2 thereof and in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof and in the last paragraph of Article 17 thereof), and reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof, and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of the Railroad's indebtedness in respect of the Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded, and (c) all of the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its obligations contained in Articles 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder under Articles 2, 5, 15 and 16 (except that the Assignee shall also be entitled to the benefit of the Railroad's obligation under Articles 15 and 16) of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby

authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature, except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons, whomsoever based on claims originating prior to the delivery of such unit by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by

the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or under Articles 10 and 16 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments.

The Builder will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes, or is claimed to infringe on any patent right, except for any design, article or material specified by the Railroad and not manufactured by the Builder. The Builder agrees that any amount payable to it by the Railroad in respect of the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the As-

signee, shall not be secured by any lien or charge on the Equipment or any unit thereof.

SECTION 4. The Builder covenants and agrees that, at the time of delivery of each unit of the Equipment to the Railroad, there will be plainly, distinctly, permanently and conspicuously marked on each side thereof, the following legend in letters not less than one-half inch in height:

“MERCANTILE TRUST COMPANY NATIONAL
ASSOCIATION, ASSIGNEE, OWNER.”

SECTION 5. Upon request of the Assignee, its successors and assigns, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 6. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of Equipment, shall pay to the Builder an amount equal to that portion of the Group Invoiced Purchase Price (as defined in said Article 3) of such Group not payable by the Railroad pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, at least 5 business days prior to such Closing Date, the following documents, in such number of counterparts as may reasonably be requested, in form and substance satisfactory to it:

(a) A Bill of Sale from the Builder to the Assignee evidencing the transfer to the Assignee of title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all

claims, liens, security interests and other encumbrances of any nature, except only the rights of the Railroad under the Conditional Sale Agreement;

(b) A certificate or certificates signed by an officer or other authorized representative of the Railroad stating that the units of the Equipment in such Group have been delivered to the Railroad in accordance with the Conditional Sale Agreement and have been inspected and accepted by him on behalf of the Railroad and further stating that all such units have been marked as required by Section 4 hereof;

(c) An invoice or invoices for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of counsel for the Railroad stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a valid instrument binding **upon the Railroad** and enforceable against the Railroad in accordance with its terms, (iii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation is necessary for the protection of the rights of the Assignee in any State of the United States of America, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, and (v) title to the units of the Equipment in such Group is validly vested in the

Assignee, free of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement;

(e) An opinion of counsel for the Builder stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, and (v) title to the units of the Equipment in such Group is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens, security interests and other encumbrances, except only the rights of the Railroad under the Conditional Sale Agreement; and

(f) Unless payment of that portion of the Group Invoiced Purchase Price for such Group payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement is made by the Assignee through the use of funds furnished to it for the purpose by the Railroad, a counterpart of a receipt from the Builder acknowledging such payment.

Within 10 business days after delivery to the Assignee of the Final Certificate (as defined in the Conditional Sale

Agreement) accompanied by or bearing thereon a certification by the Railroad as to the correctness of the stated price, the Assignee shall pay to the Builder the amount, if any, by which that portion of the Final Invoiced Purchase Price (as defined in the Conditional Sale Agreement) which shall be payable by the Railroad pursuant to subparagraph (c) of the third paragraph of Article 3 of the Conditional Sale Agreement shall exceed the amounts theretofore paid to the Builder pursuant to the foregoing provisions of this Section 6. The Final Certificate shall be delivered on or before October 1, 1971.

The Assignee shall not be required to make any payment in respect of, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof. The Assignee shall at the request of the Builder or the Railroad execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude any such Equipment from the Conditional Sale Agreement and from this Agreement and Assignment.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully ex-

ecuted and delivered by it for a valid consideration, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon the Builder and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee, or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, title and interests hereby assigned and transferred to the Assignee or intended so to be.

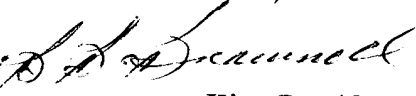
SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 10. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad, which delivery shall con-

stitute due notice of the assignment hereby made. Although this Agreement and Assignment is dated for convenience as of the date specified in the introductory paragraph of this Agreement and Assignment, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the day, month and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By 
Vice President

Attest:

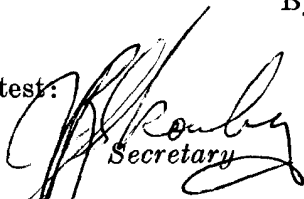

Assistant Secretary

[SEAL]

MERCANTILE TRUST COMPANY NATIONAL
ASSOCIATION

By 
Vice President

Attest:


Secretary

[SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

On this 1st day of March, 1971, before me personally appeared B. B. BROWNELL, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division); that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

My Commission expires OCTOBER 28, 1971

[SEAL]

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

On this 19th day of March, 1971, before me personally appeared Donald B. Wahrman, to me personally known, who, being by me duly sworn, says that he is a Vice President of MERCANTILE TRUST COMPANY NATIONAL ASSOCIATION; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

My Commission Expires November 24, 1972

Notary for the County of St. Louis
which adjoins the City of St. Louis

[SEAL]

ACKNOWLEDGMENT OF NOTICE OF
ASSIGNMENT.

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of April 1, 1971.

THE ALTON & SOUTHERN RAILWAY COMPANY

By


Vice President